R E P O R T R E S U M E S

ED 011 246 SP 000 857

A REPORT OF RECOMMENDATIONS ON THE RECRUITMENT, SELECTION, APPOINTMENT, AND PROMOTION OF TEACHERS IN THE NEW YORK CITY PUBLIC SCHOOLS.

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PUB DATE 66

EDRS PRICE MF-$0.09 HC-$2.32 58P.

DESCRIPTORS- ADMINISTRATIVE PERSONNEL, INSERVICE PROGRAMS, TEACHER CERTIFICATION, TEACHER IMPROVEMENT, TEACHER PLACEMENT, *TEACHER PROMOTION, *TEACHER QUALIFICATIONS, *TEACHER RECRUITMENT, *TEACHER SELECTION, *TESTING, NEW YORK CITY

FOLLOWING AN EARLIER REPORT (SP 000 858), ANALYSIS OF LICENSING PRACTICES POINTS TO THE ANACHRONISM OF APPLYING PROCEDURES PERTINENT WHEN SUPPLY EXCEEDS DEMAND BUT NOT TO THE PRESENT "TEACHER MARKET." RECOMMENDATIONS ARE (1) ESTABLISH A COMMISSION TO MONITOR THE PERSONNEL SYSTEM AND A BUREAU STAFFED BY TECHNICAL SPECIALISTS TO DEVELOP AND VALIDATE SELECTION PROCESSES, (2) UPGRADE THE IMAGE OF THE NEW YORK SCHOOLS THROUGH AN AGGRESSIVE NATIONAL CAMPAIGN, (3) RECRUIT BOTH NEW AND EXPERIENCED TEACHERS AND ADMINISTRATORS AND ESTABLISH LIAISON WITH TRAINING INSTITUTIONS ON A NATIONWIDE BASIS, (4) INCREASE APPOINTEE RETENTION BY MAXIMAL ASSISTANCE DURING THE FIRST YEAR OF WORK, BY MATCHING ASSIGNMENTS TO INDIVIDUAL STRENGTHS, AND BY A COMPREHENSIVE INSERVICE PROGRAM, (5) USE POSSESSION OF A NEW YORK STATE CERTIFICATE OR SUFFICIENT SCORES ON THE NATIONAL TEACHER EXAMINATION AS EVIDENCE OF ELIGIBILITY FOR FURTHER SCREENING, (6) ABOLISH "SUBSTITUTE" AS A LICENSE, REQUIRE A NEW YORK STATE CERTIFICATE FOR APPOINTMENT TO ACADEMIC HIGH SCHOOLS, AND MAKE THE PROBATIONARY PERIOD A GENUINE PART OF THE SELECTION PROCESS, (7) RECRUIT ADMINISTRATORS LOCALLY AND NATIONALLY, USING THE ASSISTANT PRINCIPALSHIP AS THE POINT OF INTAKE AND, FOLLOWING SCREENING, PROVIDE A FULL-YEAR ADMINISTRATIVE TRAINEESHIP, BASING SELECTION FOR HIGHER POSITIONS ON ON-THE-JOB APPRAISAL, AND (8) PROVIDE FOR UP TO 5 PERCENT OF APPOINTMENTS OUTSIDE NORMAL SELECTION PROCEDURES. (HA)

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Center for Field Research and School Services
New York University
1966

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1966

A REPORT OF RECOMMENDATIONS ON THE RECRUITMENT, SELECTION, APPOINTMENT, AND PROMOTION OF TEACHERS IN THE NEW YORK CITY PUBLIC SCHOOLS

This report is in response to the request of Mr. Lloyd Garrison, President of the New York City Board of Education, that recommendations be prepared to improve the recruitment, selection, appointment, and promotion of teachers. These recommendations were to include those possible under existing laws as well as those which would require a change in the law. The legal implications of this report are contained in an attached Memorandum written by Daniel G. Collins of the New York University School of Law. Discussions with Superintendent Donovan indicated that the recommendations might well grow out of the study done by a New York University team in 1963, but that the present team did not need to feel restricted to the previous report.[1] In preparation for its task the team collected data to up-date its previous report, held discussions with individuals either in or close to the city schools, and reread reports written by others going back to 1943.[2]

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[1]Daniel E. Griffiths, et al., Teacher Mobility in New York City (New York University. Center for School Services and Off-Campus Courses, 1963).

[2]George D. Strayer and Louis E. Yavner, Administrative Management of the School System of New York City, Volumes I and II, October 1951.

A Tentative Statement of Proposals to Improve Educational Efficiency in Our City Schools (Educational Policies Committee of United Federation of Teachers Local 2, A.F.T.-CIO, 1960).

Staffing Our Schools Today and Tomorrow. A Report of the

Regardless of the source consulted, one discovers a sense of dire need, urgency, and at the same time utter frustration. Much has been said about improving the personnel function of the city schools, yet little has been done. The responsibility for the personnel function is divided to such an extent that no one individual can be blamed for the present situation. In spite of all the talk, all the reports, and all the money spent, the overall personnel situation worsens from year to year. The single index indicative of the situation is that the percentage of regular teachers has declined steadily from 86 in 1957 to 67 in 1966.

It would, however, be unfair and inaccurate to state that no progress has been made. In addition to several improvements made by the Board of Examiners, the team notes with approval provisions of the Agreement between the school district and the American Federation of Teachers concerning "shopping around," transfer, and appointment. Several innovations have helped to make the system function better, but the basic weaknesses continue and worsen. What is needed is not to tinker with the present structure but to replace it with a personnel system that can cope with contemporary problems.

Board of Superintendents and The Board of Examiners, 1961.

Mark C. Schinnerer, "The Schinnerer Report," 1961.

Cresap, McCormick, and Paget, Summary Report of Assignments Conducted for the New York City Board of Education, 1962.

Leonard Moriber, Declinations of Appointment and Cessation of Teacher Service Over A Five Year Period, Publication No. 208, Board of Education, New York City, 1963.

George D. Strayer, Interim Report of the New York City Sub-Committee Concerning Administration and Financing of That Part of the Public Education System of the City of New York Under the Control of That City's Board of Education, 1943.

Present personnel procedures are largely relics of the past. There is little doubt that when there was a vast oversupply of teachers, the examination system produced an adequate supply of excellent teachers. This is a reasonable conclusion, but one for which there is no research evidence, for there have never been studies of the validity of any examination given for a position in the New York City Schools. At any rate, it is reasonable, in a period when supply exceeds demand, to use selective measures: tests, interviews, and records. The same system, based upon the same assumptions and employing similar procedures, is ridiculous in a period when demand far exceeds supply. The result is here for all to see: the city now uses an examination procedure to produce a teaching staff in which 33 percent do not meet the requirements for the regular license.

The Board of Examiners

The Board of Examiners has had a long history of service to the educational system of New York City. The title of Examiner is a prestigious one and is recognized as such by personnel administrators throughout the country. The prestige of a board of examiners is, however, closely tied to the quality of the personnel which it selects for positions. When a board of examiners continues to function in a period of scarcity of manpower in the same way that it did in a period of oversupply, the quality of personnel decreases and the prestige of the board

wanes. So it is with the New York City Board of Examiners. Failing to respond to the needs of the times, it has not provided the schools with the necessary supply of qualified teachers. Further, the Board has not validated its promotional examinations, and has been accused of lack of flexibility. The Board has responded to these criticisms in various ways: that it is not responsible for recruitment; that the Board of Education does not provide funds for a research staff; and that the tests it uses are indeed doing the job.

Such a colloquy merely reaffirms the numerous observations that the Board of Examiners exists apart from the rest of the school system. It is very easy to gain the impression that the Board of Examiners is an independent, autonomous body. The actions of the Board of Education and the Superintendent of Schools are often such as to reinforce this impression. The Board of Examiners is not, in fact, independent and autonomous. It should be considered as an administrative arm of the system.

The duties of the Board of Examiners are specified in state law as follows:

> . . . to hold examinations whenever necessary, to examine all applicants who are required to be licensed or have their names placed upon eligible lists for appointment in the schools in such city, except examiners, and to prepare all necessary eligible lists. . . . It shall perform such other duties as the board of education shall require.[3]

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[3]Education Law, Section 871, as added by L. 1917, Ch. 786, and amended by L. 1920, Ch. 837.

The relationship between the school district and the Board of Examiners was established in 1926 and has held to this day.

> The board of examiners of the city school district of New York is not an independent body. It exists as part of the educational system of the district. The jurisdiction of the board of education extends over it as over every other board or bureau of the system subject only to the exclusive power and duty conferred by statute in the conduct of examinations and the preparation of eligible lists.[4]

The separateness of the Board of Examiners is a matter of historical accident and should be remedied by the Board of Education.

It is well known that the Examiners spend most of their time in administration rather than in policy-making or the evaluation of the output of the examination process. This too should be rectified.

The Board of Examiners has achieved a well-deserved reputation for honesty and integrity. It has functioned in such a manner that it is not possible to accuse it of corruption. This is all to the good, and any reorganization of the Board must insure that corruption will never be present. However, as Strayer and Yavner pointed out, many years ago, "Any view that an examining board exists primarily to keep out of the system incompetent persons who might have obtained employment under a political spoils system is several decades behind modern thinking in

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[4]Taken from a document entitled "Memorandum As To Inquiries Submitted By A Committee Of The Board Of Education Relative To The Board of Examiners," signed by Frank P. Graves, Commissioner of Education, and Frank H. Gilbert, Deputy Commissioner and Counsel, January 23, 1926.

public personnel administration."[5] The principle of merit—the best man for the job—is equally important, and more emphasis must be given to the attainment of quality in the school system.

With this as background, the following recommendations are made.

> Recommendation 1. The Board of Examiners should be replaced by a Personnel Commission consisting of the Superintendent of Schools and two Commissioners who are to be selected by the same procedure as is now used to select Examiners. The meetings of the Commission should be chaired by the Superintendent of Schools or his representative.

The effect of this recommendation is to change the functions and the operations of the Board of Examiners. The Personnel Commission's major function should be to monitor the personnel system. It should see to it that the personnel system is responsive to the needs of the school district, that corruption is kept out, and that the merit principle is maintained.

The Deputy Superintendent for Personnel will doubtless represent the Superintendent of Schools, as is now the practice. This will tie the Commission closely to the Division of Personnel and make it responsive to needs.

The transition from the present Board of Examiners to the Commission should be made gradually, and the reduction to two should come about through attrition. However, the Superintendent should assume the

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[5]Strayer and Yavner, op. cit., pp. 766-767.

chair as soon as the necessary changes in the law are achieved.

Figure I depicts the position of the Personnel Commission in the table of organization.

Board of Education

Supt. of Schools

Deputy Supt. for
Personnel

Personnel
Commission

Figure I

Organizational Relationships of Personnel Commission

Recommendation 2. The major function of the Personnel Commission should be to monitor the personnel system.

The Commission should not perform any of the personnel functions, and since it is proposed that it have only a secretarial staff, the proposed plan

guarantees the separation of administration and monitoring.

The Commission should:

1. Certify lists of those eligible for appointment to various positions.

2. Certify lists of those eligible for tenure.

3. Constantly check on the methods of selection so as to be certain that the reliability and validity of procedures are high.

4. Hear appeals. Since selection procedures (see below) will not be administered by the Commission, this plan proposes a separation of administration and appeals, which is highly desirable.

5. Constantly assess output of the selection procedures against the needs of the district.

6. Ensure that no time is wasted in the selection process.

7. Constantly review the methods of selection to determine whether the most modern, efficient, effective, reliable, and valid procedures are being employed.

Recommendation 3. A new Bureau of Selection should be created in the Division of Personnel.

The Bureau of Selection should administer such tests or procedures as are necessary to select competent individuals for positions in the schools. The Bureau should be staffed with able psychometricians, evaluation specialists, statisticians, and supporting personnel. It should also have a staff of skilled researchers to conduct studies of the reliability and validity of all selection procedures.

The bureaus of the Division of Personnel should provide the Personnel Commission with such reports as the Commission requests. In addition, the Commission should have a budget to employ consultants to

study problems selected by the Commission as significant for improving the personnel function.

The proposed plan has many advantages over the existing organization. As can readily be seen, it is an adaptation of the concept of the Civil Service Commission employed at the federal, state, and municipal levels. The concept is one that has been tested, and it works. Since those administering the selection procedures are placed under the Deputy Superintendent for Personnel, the inefficiencies of administration by committee (which is now the case with the Examiners) are eliminated. The separation of the Commission from day-to-day operations should enable it to take the long view, to stand off and appraise the operation of the personnel system in relation to the whole district. The creation of the Personnel Commission, together with adoption of the recommendations which follow, should greatly improve the personnel function in the New York City Schools.

Recruitment

Recent years have seen the rapid development of a recruitment program in the New York City Schools. This is to be highly commended. The following is a discussion of ways in which the program could be expanded and is not to be construed as negative criticism of the present program.

Any attempt to describe a recruitment program for professional

staff for a large city public school system such as that in New York City must account for a variety of factors which, though they may be external to the system itself, nevertheless impinge upon that system's capability to attract qualified personnel. In this regard the following factors are among the most critical:

Urbanization factor. It is well established that generally, the face and the character of the big city are changing. The most obvious changes are those related to population. The in-and-out-migration of people to and from the city has considerably limited the size of the group from which teachers and other professionals may be drawn and it has also created a relatively large number of families of low socio-economic means. The impact of this population movement is felt through (a) the need to look outside the city environs for professional talent; (b) the need to gear an educational program to large numbers of children of minimal educational background and advantage; (c) the strain on the fiscal resources of the city to provide welfare, health and other services in addition to education; and (d) the press upon physical facilities which are not only old and educationally out-dated, but are also inadequate to serve the numbers of students which must be educated.

Social reconstruction factor. There is great vigor and strength among the minority and other groups that bring pressure upon society to change. These groups are particularly active in the big city, manifesting their strength through such activities as the civil rights

movement, the war on poverty and the like, and using the schools as their battleground for equality. Their search for equality brings with it acts of violence and social upheaval which in the big city become magnified not only by the number of different groups seeking equality and the actual number of people involved but also by the intensity of the acts and their comprehensive reporting through the news media.

Skilled-manpower factor. Technological and social advances have created vast changes in our society. Particularly is this true in the need for well trained people to handle the many complex activities demanded in a technologically-oriented society. The demand for skilled and semi-skilled people in the city is great and the school system is looked to for the training of these people. Oftentimes the demands upon the city school far outstrip its capacity to meet them.

The above factors and others create a multitude of problems for the school system and among other things make recruitment of personnel difficult, for they hold implications for working conditions in the school, and for the professional nature of the task. Attracting capable people into the school system is a very difficult problem to resolve.

In New York City the problem is compounded by the red tape involved in the licensing procedures, which in many ways work to the disadvantage of the school system. It must be clearly pointed out that the shortage of able teachers throughout the nation gives great advantage to a teacher candidate and in many ways creates a candidate's

market. Thus any obstacle (e.g., the licensing process) placed before desirable candidates works against encouraging them to teach in New York City. The strength of the recruitment program depends in large measure upon the nature of the selection and licensing processes employed in the New York City school system.

Recommendation 4. Attention needs to be given to up-grading the image of the New York City school system.

The problems of the big city, suggested earlier, create a negative image which keeps many people of good potential from wanting to live in New York City and from teaching in its schools. Many fear bad teaching conditions, poor facilities, inadequate resources, poor morale and – even worse – unteachable students. In brief, many people are afraid to teach in New York City because the "blackboard jungle" image persists. This image is intolerable, for it works to the disadvantage of any recruitment efforts by the school system. Assuming that where sub-standard conditions exist, all is being done to correct them, efforts must go into dispelling the negative image if there is to be any hope for a successful recruitment program.

Specifically, a positive image of the New York City schools must be generated. There is need for a systematic campaign throughout the entire United States and Canada which projects an image of a forward-looking, advancing school system. This campaign must go beyond advertising of vacancies in newspapers and journals. It should be a

campaign guided by the imaginative skills of a well-qualified advertising agency; it should be bold and aggressive, and it should be led by energetic, capable professionals with a strong belief in the future of the school system.

A comprehensive approach should be followed, involving all the resources of New York City, and the central theme of the campaign should be "New York City is an exciting and challenging place in which to teach."

Recommendation 5. Expand the responsibility of the Bureau of Recruitment.

The competition for professional talent in this country has become intense. This is true for business and government and also for education. The simple fact of life is that individuals with talent in any given field are much sought after and, in education especially, every energy and every appropriate resource should be expended in the recruitment of capable people.

Needed resources. The Bureau of Recruitment must have at its immediate disposal such resources as the following:

1. It must have an adequate permanent staff which works on recruitment year-round.

2. It must have access to teachers, principals, and others for developing recruitment teams which will become active in the over-all recruitment program. One suggested format for a recruitment team

would include one principal, one teacher, and one member of the Bureau of Recruitment. Recruitment teams should spend two to three days in the field when appropriate.

3. Recruitment teams should have the authority to offer reasonable assurance of employment to those who meet the selection criteria for the school system.

4. An adequate travel and resource budget should be made available to the Bureau.

The Board of Education must view this Bureau as an area which is among the most critical to the future growth and development of the school system. The Board of Education must accord this Bureau the appropriate status and resources that are necessary to its successful operation.

Recruitment activities. The Bureau must extend its search for professional talent to all parts of the United States and, where appropriate, to Canada and other countries. It is conceivable that, through exchange or other programs, professionals from other countries could work in the school system.

The Bureau should seek out and hire the best newly-graduated teachers in the nation. This effort requires that staff members visit the campuses of colleges and universities in the United States and Canada where effective teacher preparation programs are being offered. These visits need to be scheduled on a regular basis and should include interview time with prospective candidates. The Bureau should prepare

movies, slides and other materials of outstanding quality which may be used to interest prospective candidates in coming to teach in New York City.

All recruitment activities should not be focused entirely upon newly-graduated teachers. Efforts should be directed towards attracting experienced teachers to come to teach in New York City. Whatever changes in the licensing or salary credit procedures may be needed should be made as soon as possible in order that the Bureau of Recruitment may begin its search for experienced teachers immediately.

Outstanding graduates of administrator preparation programs should actively be sought, and they should be given added training in the school district. (See Recommendation 16.) Efforts also need to be expended to recruit administrators of proven ability from other school systems. This would not only enrich the New York City schools, but it would also provide the potential for fresh new approaches to solving some of the problems facing the school system.

Recommendation 6. Establish effective systematic liaison with teacher and administrator training institutions both inside and outside the New York City area.

Inside the New York City area. Currently the major suppliers of teachers to the New York City public schools are the colleges within the City University of New York. Data in the 1963 teacher mobility study revealed that certain issues requiring careful attention and review exist between the school system and the city colleges. These issues are

related to such proposed new procedures as (a) requiring student-teaching experience for the substitute license; (b) modifying the required licensing procedures for college graduates who have already been through a battery of examinations similar to those given by the school system; (c) denying teaching licenses to people found by the colleges to be unsuitable for teaching; and (d) reviewing the records of teacher candidates who are graduates of these colleges. These and other issues need to be examined with an eye towards developing strong, workable relationships between the school system and the City University of New York.

There are many other teacher and administrator training institutions in the New York area with which effective liaison needs also to be established. It would be to the great advantage of the system to give at least one staff member of the Bureau of Recruitment major responsibility for maintaining these relationships.

Outside the New York City area. There are a number of good teacher and administrator training institutions outside New York City with which systematic liaison should be established. Besides the regular visits to the campuses of these institutions, imaginative programs need to be devised whereby these institutions can stimulate interest and increase the flow of potential teachers and administrators to New York City. One program, for example, might be called "A Student Teaching Year in New York City." Contact should be made with officials of several colleges and universities in the United States to arrange for a number of selected teacher trainees to spend this student teaching year

with the New York City public schools. The Division of Personnel would have to locate appropriate living accommodations and provide adequate personal and professional supervision, and should offer a reasonable living allowance to the participants in the program. It would be highly desirable to have a college or university in New York City assist in the professional supervision of these student teachers. The investment in such a program by the Board of Education would be small in terms of the prestige that could accrue to this program and in terms of the number of student teachers who might wish to stay and teach in the school system.

Recommendation 7. Imaginative pre-service experiences should be developed for attracting potential teachers and administrators.

The Division of Personnel should be constantly planning and implementing new and imaginative programs which will encourage capable people to teach and become administrators in New York City. A special section of the Division should be given the responsibility for developing and carrying out such programs. The already established Intensive Teacher Preparation Program is an example of such efforts, and the administrative traineeship program described elsewhere in this report (see Recommendation 18) is another.

The sources of potential teachers and administrators are numerous (e.g., Peace Corps, liberal arts colleges, business and industry), and through intensive recruitment efforts and imaginative pre-service

programs a large number of people could well be attracted into teaching in New York City.

Recommendation 8. Improve the office arrangements and the orientation of staff members of the Division of Personnel.

The first impressions of potential teacher and administrator candidates are made at the point of initial contact, and where this contact is cold and uninterested, the candidate will have second thoughts about applying for a position in the system. In a candidate's market, it is foolhardy not to pay close attention to the point of first contact by potential candidates. In the New York City public schools, the point of first contact between a potential candidate and the school system is either through the recruitment team or through the Board of Education office in Brooklyn. In the latter case, two factors need careful examination.

Office arrangements. The office of the Division of Personnel and all of its Bureaus should be located in an area that is easily accessible to prospective candidates. In a multi-story building, the Division should be located on the first floor and all unnecessary searching and walking about by a prospective candidate should be eliminated. The location of needed services in the building should be clearly posted. Difficulty in finding the right office can lead to discouragement and, worse, can leave a bad image of the school system. The physical appearance of the Division should be attractive and should give the aura of a professional organization sincerely interested in people.

Staff relations. Clerks and others in the Division of Personnel should be well trained to respond to questions and to supply necessary information in a cheerful, efficient, and professional manner. Each inquiry should be treated with care and with interest. Consideration should be given to establishing a training program for non-professional personnel in the Division. Also, where feasible, procedures related to the distribution or collection of information should be automated.

Recommendation 9. The Bureau of Recruitment should include a section which can assist incoming teachers and administrators in such matters as settling in New York City and locating vital personal services.

If candidates from outside New York City are to be attracted to working in the school system, they must have some assistance with the personal problems related to settling in the area: finding suitable housing, learning about vital services, understanding travel patterns through subway and commuter lines, and the like. Particularly are these factors crucial for those coming into the city for the first time. The fear of the unknown needs to be dispelled, and one means of achieving this is to provide new staff members with every assistance in solving problems related to settling in the New York area. Those charged with this responsibility will have to develop attractive informative materials, and, in many cases, will personally have to assist the newcomer in becoming oriented to the city.

Recommendation 10. The turnover problem, especially among the newer teachers, needs to be ameliorated through actions which give evidence of greater concern for the individual needs of the teacher.

The 1963 teacher mobility study defined recruitment as both obtaining and retaining capable people. Data from this report show that the highest rate of teacher dropout occurs during the first few years of teaching in the system. The three major causes for this dropout were inadequate orientation to the job, unsuitability of first assignment, and lack of professional growth during first assignment. These causes should be eliminated. There is little logic in working to recruit qualified personnel and then doing little about the problems which cause many of them to leave the system.

The Division of Personnel should:

1. Develop an orientation program to provide the maximal amount of assistance to those just beginning in the system. Such activities as (a) the buddy teacher, (b) special classes, and (c) released class time should all be considered in order to make orientation effective. This program should reach all new teachers throughout their first year in the system.

2. Ensure that the first assignment is suitable for the new teacher. In this regard, care must be taken not to establish a de facto policy of assigning new teachers to difficult schools. Many new teachers, unsuited to teaching in such schools, become discouraged very quickly and leave the system. Where possible, each assignment should be made

in terms of the unique skills and talents of the individual teacher.

To alleviate the problem of staffing the difficult schools, the Bureau of Recruitment should establish a special program which actively seeks teachers for the difficult schools. The appeal for these teachers should be based on the challenge of working in difficult schools.

3. Assist in the professional growth of the staff by providing a comprehensive continuing-education program designed to meet the needs of the professional staff as it attempts to provide education in the urban complex. To this end, specialists from the colleges and universities could join with others from the school system in conducting seminars related to urban problems.

Selection and Appointment of Teachers

The criteria and procedures used in the selection of teachers have a powerful effect upon the manpower available for classroom needs. Attempts at recruitment from outside New York are likely to be frustrated as long as selection criteria and procedures discriminate against outsiders. Factors of prudence, quality, and efficiency should be taken into account in obtaining qualified teachers for the schools.

Factor of prudence. The principle of protection against corruption, patronage, or pay-offs for the privilege of teaching in New York should be maintained without impairment. The need for protection against corruption in selection is related in part to the balance that

exists between the supply of applicants for positions and the demand created by vacancies in those positions. When the number of qualified applicants is greater than the number of openings, the risk of corruption and consequently the need for protection against it is greater than when the converse is true. Years ago the number of qualified applicants for teaching positions in New York City exceeded the number of positions open in any one year. This is no longer true. In addition, the requirements for the certification of teachers by the State of New York and many other states have become more demanding. The existence of these requirements provides a further check against corruption, because they constitute a barrier against unqualified applicants.

Factor of quality. Selection criteria and procedures should seek to maximize merit and quality in teaching. Protection against patronage does not of itself insure quality. It may be that no initial selection process will ever completely insure quality; however, some processes offer a higher probability of better teacher selection than do others. The New York State certification pattern links the accreditation of teacher training programs and the certification of teachers. The state's requirements are a better assurance of quality in teaching than a set of tests.

Factor of efficiency. Efficiency in selection should be measured in terms of financial cost, time and energy expended, and the yield of qualified teachers. The present selection process is costly in both time and money for all concerned. It further makes it difficult for the

city to take in qualified teachers from the rest of the state and nation.

> Recommendation 11. Any person holding a provisional or permanent New York State Teaching Certificate should be eligible to teach in the city's schools. After being interviewed and screened by the Bureau of Selection, appointment of such teachers should be made by the Board of Education of the City of New York upon recommendation by the Superintendent.

Many advantages would result to the New York City schools by following this recommendation. Requiring applicants to meet state certification requirements would eliminate unqualified applicants. This would also extend the potential pool available for recruitment to the state and the nation. The Bureau of Recruitment should make recommendations to the Superintendent in the cases of teachers recruited outside of New York City. The state would assume the burden of certification, thus releasing the time and money presently put into testing by the city.

> Recommendation 12. The National Teachers Examination should be used for applicants not yet holding a permanent or provisional certificate from New York State.

Only persons whose college training qualifies them for the New York State temporary teaching certificate should be accepted as applicants. Lists of teachers certified as temporary should be developed from their scores on the NTE. The Bureau of Selection should establish acceptable minimum NTE scores for New York City. Applicants for temporary teaching positions should be interviewed and screened, after

their NTE scores are known, by the Bureau of Recruitment or the Bureau of Selection. Following this, temporary appointments should be made by the Board of Education, upon the Superintendent's recommendation.

Under the present emergency conditions it is difficult to get teachers for New York City. This emergency condition is aggravated by the pattern of testing which allows applicants to ignore state certification and training requirements such as student teaching. No pattern which allows people to teach for years without commitment to becoming fully qualified should be used. It encourages and rewards a low degree of commitment to teaching. This pattern feeds upon itself, making the emergency permanent.

The use of temporary certification will produce more applicants than positions; therefore, a ranked list will be needed.

When the number of provisional and permanent certified teacher applicants exceeds the positions open, a ranked list based upon National Teachers Examination scores will be necessary for these also.

No one should be allowed to remain in the temporary category. Should a temporary teacher not attain certification within a reasonable time, separation from the schools should become automatic.

Recommendation 13. The substitute teacher's license should be abolished. All teachers in the city's schools should be moved to the appropriate certification category.

The category of substitute teacher is needed as a position but not

as a teaching license. The use of the term as a license category instead of a job description has resulted in making necessary the distinction of regular and per diem substitutes. The regular substitute category includes thousands of teachers who teach for years in given buildings. Their work is no different from that of a so-called regular teacher. The present designation makes an invidious comparison between teachers many of whom do the same work. "Substitute teacher" should be used only to describe teachers who take the place of an absent teacher. No one should be allowed to substitute unless he is certified.

> Recommendation 14. Appointment of teachers to the academic high schools should be confined to teachers holding a permanent New York State certificate.

The emergency conditions existing in other divisions do not exist in the case of the academic high schools. There is no reason to compromise with quality here.

Quality attracts quality. The team is certain that if New York City declares itself for quality education and employs only fully qualified teachers, a sufficient number will be attracted. The academic high schools are the best schools in which to test this hypothesis. It is recommended that the school district run an experiment in the academic high schools and then move in future years according to what is learned.

> Recommendation 15. The probationary period should be made a genuine part of the teacher selection process.

As long ago as 1943 George D. Strayer pointed out that, "two out of every thousand probationary teachers in recent years failed of permanent appointment."[6]

Teacher appraisal for tenure should be among the most carefully performed tasks of a school district. The orientation handbooks for Intensive Teacher Training Program trainees and their principals are a beginning. There should be a program of systematic appraisal throughout the probationary period for all teachers. This is the surest road to quality in teaching. Teachers not adequate for tenure after such appraisal should not be retained as substitutes either.

Promotion

Past surveys and other analyses of professional personnel administration in the New York City public schools, including the 1963 teacher mobility study, have yielded a number of criticisms of the procedures used in promoting teachers and in promoting or appointing others to administrative and supervisory positions in the city school system. These reports have pointed out the following weaknesses. (a) Current procedures are not sufficiently valid, in that they rely too heavily on paper-and-pencil tests and do not give enough weight to the appraisal of administrative performance on the job. There may be a

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[6]George D. Strayer, Interim Report of the New York City Sub-Committee of the Joint Legislative Committee on the State Education System, Legislative Document (1943), No. 55, p. 138.

rating of a demonstration lesson taught by the candidate, a rating by candidates of teaching by actual teachers in live teaching situations, or even a general evaluation of the candidate's performance on the job by an inspection team. But there is no systematic appraisal of administrative performance on the job over a period of time, such as would be possible in an administrative traineeship, for instance. (b) Current procedures provide too low a proportion of successful Negro and Puerto Rican candidates, although this may be due in part to a low proportion of such personnel in the total teaching staff of the schools. (c) Current procedures are one part of a career development pattern that is too personalistic, that is, too dependent upon whom you know for encouragement to move up the ranks and for assistance in gaining promotions to the more favored positions. The common use of appointments to positions such as assistant principal on an "acting" basis is an undesirable practice which further contributes to this personalistic tendency. (d) The eligibility lists established by current procedures have too long a life. Therefore, points of entrance to administrative and supervisory positions and careers are too few and far between. (e) Current procedures tend to produce inbreeding in the school system in three ways. There is too little effort given to recruiting candidates for administrative and supervisory positions from outside New York City. The examination system places a premium upon localized knowledge available only to insiders. The informal system

of preparing for the examinations uses a technique of coaching where inside candidates come under the tutelage of other insiders already members of the administrative hierarchy.

There are a number of ways in which current promotional procedures could and should be improved. The intake process for promotions and for higher positions in the New York City schools should seek out and attract candidates from outside the school system as well as from inside, and should seek out and attract candidates who are at an early point in their careers as well as others who are at mid-career points. Both outsiders and younger candidates would tend to bring fresh ideas into the system and to challenge the "conventional wisdom" which tends to develop in any organization which draws too heavily upon insiders for advancement to higher positions of responsibility. Nevertheless, most candidates for administrative-supervisory positions should continue to come in at the bottom level, such as the position of assistant principal, and then come up through the system. Therefore, the major recruitment effort must be made at the bottom level, if any significant number of outsiders is to find a way into the administrative structure.

Selection for initial appointment to administrative positions should be a continuing process operating in three-year cycles. The school system is large enough to require a steady intake of personnel for assistant principalships and similar positions. Men and women

aspiring to such positions should be able to count on regularly recurring opportunities to apply. In addition, the selection process for appointment to administrative positions should give greater emphasis to on-the-job training, as in an administrative traineeship, and to appraisal of administrative performance on the job.

Even in a properly functioning merit system there should be some leeway to make appointment of exceptional candidates exempted from the normal selection process. The Superintendent should have leeway to make such appointments in order to avail the school system of the services of well-qualified individuals, some of them already employed in responsible positions in other school systems, who would not otherwise consider employment in New York City. Such leeway could also be used to meet the needs of the city for certain special categories of personnel.

Procedures such as these point to the following specific recommendations:

> Recommendation 16. Candidates for such positions as assistant principal should be actively recruited nationally as well as in New York City.[7]

Recruiting teams should make regular visits to colleges and universities with training programs in educational administration to

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[7]The term "assistant principal" is meant also to embrace such closely related positions as "assistant to the principal."

interview full-time graduate students, teachers, and practicing administrators, encouraging the most promising ones to apply for administrative-supervisory positions in New York City. It should be possible for candidates from outside New York City to complete all preliminary selection procedures without having to come to New York.

The intent here is not to favor outside candidates over insiders, but rather to stress the special effort it takes to make New York more appealing to those from outside. In turn, theirs would be a leavening influence on the city schools, for they would bring with them new ideas, new approaches, new attitudes—all of which would be stimulating to the schools. Once attracted and employed, such outsiders would tend to restore the once favorable image of the New York City schools abroad in the land.

> Recommendation 17. The point of intake for positions in the administrative structure should be the assistant principalship. Most appointments to higher positions should be from among those occupying lower positions within the school system.

Even after pointing to the dangers of inbreeding, it must be recognized that incumbents in principalships and higher positions can benefit from the intimate knowledge of the workings of the school system derived from actual experience in it. It is reasonable to expect, therefore, that the flow of candidates to higher positions will be from the assistant principalships and equivalent positions. This makes it

doubly important for there to be vigorous recruitment of outsiders for the bottom level positions in the administrative structure, if there is to be any significant intake at all of outsiders. On the other hand, even at the higher level the intake process should not be closed to outsiders. Certainly under the final recommendation below, concerning exempt appointments, the Superintendent of Schools should use his leeway in bringing in outstanding principals and other administrators who will not have to go through the normal selection procedure.

> Recommendation 18. The selection process for assistant principalships should be a three-year cycle consisting of two major steps. The first step should be an initial screening process to select the members of a corps of administrative trainees. The second step should be a full-year, full-time, fully compensated administrative traineeship.

The first step in the selection procedure should assess the candidate's training, intellectual ability, personality, professional knowledge and competence, skill in writing, and physical fitness. Thus, appointment to the corps of administrative trainees should depend upon such factors as these: (1) eligibility for a New York State certificate as "instructional administrator–principal" under the new regulations of the Commissioner of Education of New York State which become mandatory on September 1, 1969, except that the candidate would not be expected to have completed an administrative internship; (2) a satisfactory score on the Aptitude Test (Verbal and Quantitative) and on the Area Tests (Social Sciences, Humanities, Natural Sciences) of

the Graduate Record Examination; (3) a personal interview; (4) a satisfactory score on the School Administration and Supervision Test administered by the Educational Testing Service; (5) a satisfactory score on an appropriate test of writing ability, such as the College Board's English Composition Test; and (6) a satisfactory report from a physical examination. Use of widely recognized standardized tests would preclude the candidate's having to come to New York City for any part of the first step in this selection process. The interviews could be conducted by recruiting teams during their visits to various parts of the country.

The selection process here recommended would avoid criteria and techniques which place a premium on localized kinds of information where insiders have an automatic advantage. Through stipulation of the certification requirement, the city would be assured that the candidate had completed all but an administrative internship as part of a two-year program of graduate study in educational administration. The university graduate program would have to be one approved by the New York State Education Department, or the candidate's individual program of study would have to be evaluated specifically by the State Education Department.

What is contemplated as the second step in the selection process is a plan under which one-third of the members of the corps of administrative trainees would be selected at random each year by the Bureau of Selection for assignment to individual school buildings at

all levels throughout the system on a full-time basis for a full school year. The trainee would receive as salary the amount to which he would ordinarily be entitled as a teacher in accordance with his level of training and amount of experience, on the prevailing teacher salary schedule.

The staff of the Bureau of Selection should work with representatives of universities in the New York area to design an experience for the trainees which would serve the dual purpose of training and evaluation of performance. (Since it is not contemplated that the universities would be involved in the actual supervision of the trainees or in other operational aspects of the program, there would not be the three-way relationship involving trainee, school system, and university which would justify the use of the label "administrative internship." The designation of this second step as a "traineeship" rather than an "internship" is a recognition of this difference.)

Day-to-day supervision of each trainee should be the responsibility of the building principal serving as a supervising administrator. It would also be desirable to provide some experience for the trainees in the district offices and at the central office at 110 Livingston Street in Brooklyn. The conceptualization of the traineeship program should rest more upon the contribution of the traineeship to the socialization process of converting a teacher to an administrator than upon a series of task performance experiences. Emphasis should also be given to the role of an administrative trainee as a change-agent in the functioning

of the school building organization and of other levels of the school system. That is, the trainee should be encouraged to think otherwise, to ask "why," to suggest other ways as alternatives to "conventional wisdom."

During the internship year, a team of observers from the Bureau staff should make periodic appraisals of the performance of each trainee on the job with respect to such dimensions as his leadership style, effectiveness in groups, supervisory ability, public speaking ability, and writing ability. Trainees showing satisfactory performance should be ranked on a list of candidates eligible for assistant principalships, and this list should be developed by the Bureau of Selection

With a third of the corps of administrative trainees assigned to schools each year, there could well be as many as one hundred or more trainees going through this training and evaluation process every year. Participation in planning and supervising the learning experiences of the trainees would involve a number of principals and other administrative personnel, providing a stimulation for their continued professional development as well as that of the trainees. It has been demonstrated, in such programs of administrative training over the past thirty-five years or so, that the interaction between the trainee and his supervising administrator is often as stimulating to the supervisor as to the trainee.

The plan here outlined would serve younger candidates as well as older ones. For instance, it would be possible for a 23-year-old

teacher entering the system with a master's degree to gain the three years of teaching experience necessary for certification and meanwhile to take the second year of graduate study in educational administration also required for certification. Then he could go through the three-year selection cycle and be appointed to the eligibility list for assistant principal at only 29.

> Recommendation 19. Candidates for department chairmanships, principalships, and other administrative and supervisory positions should also be selected by means of on-the-job performance appraisal using teams of observers.

Selection for other first-level positions in the administrative structure should consist of a similar two-step process of initial screening and a traineeship. In the case of department chairmanships, the traineeship might be confined to a single semester in length. For advancement to principalships and other higher-level positions, the criterion for advancement should be satisfactory performance on the job in subordinate capacities. At this stage in the career advancement process, paper-and-pencil tests would have little validity. In the selection process, the teams of observers should function in evaluating subordinate administrators on the job in much the same fashion as they would function in evaluating administrative trainees on the job. Further to open up the channels for advancement subordinate administrators should not have to serve more than three years at any one position level before being eligible to apply for advancement. Nor should there be any criterion

of seniority exercised formally or informally in the appointment of administrators to higher positions from any particular eligibility list.

> Recommendation 20 The Superintendent of Schools should have the authority each year to make up to five percent of his appointments to administrative and supervisory positions on an exempt basis outside normal selection procedures for those categories of positions now on a competitive basis, and similarly to appoint up to five percent of the candidates for the corps of administrative trainees on an exempt basis outside of normal selection procedures. Such persons should hold or be fully eligible for the appropriate certificate valid for administrative and supervisory service in New York State, except that those so appointed as administrative trainees need not have served an administrative internship.

The purpose of this recommendation is to give the Superintendent the flexibility that is essential in order to bring in outstanding candidates from outside the system who would otherwise either be unavailable or be unlikely to go through the normal selection process, yet whose administrative abilities would contribute to the continuing development of the New York City schools (This recommendation is consistent with a similar provision built into the new organization of the Philadelphia City School District.) The policy would also permit the Superintendent to appoint meritorious insiders to appropriate positions in order better to meet the current needs of the school system. For such appointments to regular administrative and supervisory positions, the base to be used for calculating the percentage should be the total number of appointments to administrative and supervisory positions the preceding year. For such appointments to the corps of administrative trainees,

the base to be used for calculating the percentage should be the total number selected for the corps of administrative trainees the previous year, except that for the first year of operation of the proposed program of administrative traineeships the number of such exempt appointments should be limited to fifteen. The requirement that such candidates be fully certified would assure that they would have appropriate training and experience. The small percentage of such exempt appointments permitted would prevent any serious violation of the proper operation of the regular procedures of the merit system.

The legal opinion incorporated at the end of this report calls attention to a constitutional issue possibly raised by this recommendation. The Board of Education should exert its influence in the forthcoming Constitutional Convention of April, 1967, to remove from the Constitution such sweeping restrictions as hamper the judicious use of flexibility in the personnel administration of the city schools.

November 15, 1966

MEMORANDUM

To: Dean Daniel E. Griffiths, School of Education

From: Professor Daniel G. Collins, School of Law[8]

Re: Legal Considerations Relevant to the "Report of Recommendations on the Recruitment, Selection, Appointment, and Promotion of Teachers in the New York City Public Schools."

I have reviewed the report which you submitted to me on November 7, 1966, in the light of the New York State Constitution and statutes, the decisions of the New York courts and State Commissioner of Education, and the collective bargaining agreement currently in effect between the New York City Board of Education and United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO (the "Collective Agreement").

While the State Commissioner has described the Collective Agreement as being "cancellable at will" by the Board (Appeal of City Teachers Association of New York, 3 Ed. Dept. Rep. 30 (Dec. No. 7262, Aug. 13, 1963)), this judgment should probably not be regarded as

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[8]Professor Collins has served as a consultant to the Board of Education but in writing this memorandum he is serving in an independent, academic role as consultant to the Report Committee.

definitive or final. It would seem prudent to assume, at the very least, that the Board's professional employees might be able to offer significant resistance, by legal as well as economic means, to any changes in the basic policies set forth in the Collective Agreement.

As I read the report, it recommends, in order to improve the personnel function in the city's schools, that significant changes be made in the Board's organization and personnel policies. In particular, it is recommended that the Board of Examiners be replaced by a Personnel Commission and that important innovations be made in the policies relating to appointment and promotion of instructional and administrative personnel.

Recommendations Concerning the Board of Examiners

The report would consolidate the Board's personnel function in a new Personnel Commission, consisting of the Superintendent of Schools (or the Deputy Superintendent of Personnel acting for him) and two Commissioners (Recommendation 1). The Commission's basic responsibility would be "to monitor" the personnel function. Among its specific duties, it would certify eligible lists, and hear appeals—functions that now appear to be entrusted by statute to the Board of Examiners (Recommendation 2). Within the Division of Personnel, a Bureau of Selection would be established "to administer such tests or procedures necessary to select competent individuals for positions in the schools"

(Recommendation 3). The Bureau would then, presumably, perform the principal functions now entrusted by statute to the Board of Examiners.

The report envisons a "transition" from the present Board of Examiners to the Personnel Commission, with the reduction from the eight Examiners to two Commissioners (exclusive in each case of the Superintendent or his deputy) occurring through "attrition." At the same time the report sees the need for "necessary changes in the law," including a change to permit the Superintendent to sit as chairman of the Commission.

It is clear that the recommendations concerning the Board of Examiners could not be implemented without amendment of the Education Law. Section 2569 of that Law explicitly entrusts to a nine-member Board of Examiners the responsibility for examining and determining the eligibility of all applicants for positions in the city school system who are "required to be licensed or to have their names placed on eligible lists for appointment in the schools in the city, except examiners." Certainly, if these functions were to be placed in another agency of the Board, it would be necessary to amend Section 2569.

There is no doubt that the Legislature is competent to enact such an amendment; Article V, Section 3 of the State Constitution specifically authorizes such legislation. However, even if legislation were adopted that had the effect of transferring certain of the Board

of Examiners' statutory duties to a new Personnel Commission, and certain other of its duties to the Division of Personnel, such legislative action would not of itself dispose of the question whether the personnel of the prior Board of Examiners would have any claim to continue to perform their previous functions within the new framework. In this connection, Section 2585 of the Education Law in effect gives an incumbent of an abolished or consolidated position a right, dependent on his seniority, to occupy or be placed on a preferred eligibility list for appointment to any vacancy that might occur in an "office or position similar to the one" that was abolished or previously consolidated. While it might theoretically be possible to amend Section 2585, it is assumed that this would not be practicable.

Section 2585 of the Education Law would not necessarily mean that the personnel of the Board of Examiners would be statutorily entitled to serve on the Personnel Commission. If the position of Personnel Commissioner were not "similar" to that of Examiner, the prior Examiners would have no statutory claim to Commissionerships. While the courts construe the words "similar position" broadly, it would seem, as envisioned by the report, that the Personnel Commissioners would be charged with oversight of all aspects of the personnel function of the Board of Education, and thus would perform significantly more comprehensive duties than merely testing applicants and certifying eligibility tests—the basic functions of the present

Board of Examiners. (For a good discussion of the meaning of "similar position," see Matter of Taylor v. Board of Education of New Rochelle, 184 Misc. 213, 53 N.Y.S2d 377 (1945), modified on other grounds, 269 App. Div. 905, 56 N.Y.S 2d 492, aff'd, 295 N.Y. 882, 67 N.E. 2d 519 (1946).) There would, therefore, be no statutory requirement that Personnel Commissioners be selected from among the Examiners whose office was abolished. At the same time, it would seem that at least some positions in the new Personnel Selection Bureau of the Division of Personnel would be essentially similar to the position of Examiner, in which case preferential rights to such positions could be asserted, under Section 2585 of the Education Law, by those personnel who last occupied the position of Examiner.

What the foregoing means is that the report's conclusion that there should be a "gradual transition" from the nine-member Board of Examiners to a three-member Personnel Commission, accomplished by attrition, is not a conclusion required by applicable law. While a place might have to be found for some or all of the Examiners, without reduction in salary or other benefits, within the Personnel Division, the Education Law would not seem to require that any Examiner whose position was abolished be chosen to fill the new position of Personnel Commissioner. Furthermore, while Section 2585 of the Education Law would probably require the assignment of at least some of the Examiners to positions in the proposed Personnel Selection Bureau,

if the new Bureau were operated with fewer than eight positions "similar" to the position of Examiner, the least senior Examiners could be re-assigned to other duties by the Board and would thereby lose any right later to assert preferential rights to fill vacancies arising in the Selection Bureau. On this last point, the State Commissioner has ruled that the preferential assignment rights accorded by Section 2585, in the case of consolidation of positions, exist only in favor of an employee whose employment has been terminated as a consequence of consolidation. When an employee has, instead, been assigned following a consolidation, to a different position, the Commissioner has held that the employee may not later demand reassignment to fill a vacancy that may occur in the consolidated position. (Appeal of Marion B. Newman, 1 Ed. Dept. Rept. 288 (Dec. No. 6611, May 25, 1959).)

The report does not call for any departure, in selecting Personnel Commissioners, from the present procedure for selecting Examiners. Nevertheless, it should be noted that there is probably no State Constitutional barrier to the enactment of legislation permitting such positions to be filled by the Board of Education at its discretion, rather than from a competitive eligible list prepared by the Civil Service Commission, as is now the practice under 2569(2) of the Education Law. The constitutional requirement for competitive examinations in the civil service is discussed in the next section of this memorandum. The policy considerations attendant upon any proposals for depature from the

competitive system, as well as upon any proposals for changes in the organization of the Board of Education, are of course beyond the scope of this memorandum.

Recommendations Regarding Appointment and Promotion

Serious legal questions are raised by the following recommendations contained in the report:

1. That persons holding permanent and provisional New York State teaching certificates be made eligible, respectively, for regular and provisional city licenses (Recommendation 11).

2. That persons other than those holding state certificates be made eligible for temporary appointment in the city on the basis of scores on the National Teachers Examination, provided that the Bureau of Selection establish minimum scores for eligibility (Recommendation 12).

3. That eventually the National Teachers Examination be used to develop a ranked list of certified teachers (Recommendation 12).

4. That the city's substitute license category be abolished and substitutes previously licensed be licensed on a regular basis by "registration" or "completion of certification as soon as administratively possible" (Recommendation 13).

5. That eligibility for the assistant principal's position be based

in part on eligibility for a New York State certificate as "instructional administrator—principal" as well as on satisfactory scores on various standardized tests (Recommendation 18).

6. That the Superintendent of Schools be empowered to appoint, each year, "up to five percent of all new entrants to administrative and supervisory positions on an exempt basis outside of normal selection procedures" (Recommendation 20).

The last recommendation—that a certain percentage of administrative and supervisory appointments be at the Superintendent's discretion—seems to be the most difficult of implementation under present law, since it would in all probability require amendment of Article V, Section 6 of the New York State Constitution. The Constitution requires that all "appointments and promotions in the civil service . . . be made according to merit and fitness to be ascertained, as far as practicable, by examination which as far as practicable shall be competitive. . . ." There is no doubt that provision is applicable to the City Board of Education. (Carow v. Board of Education of the City of New York, 272 N.Y. 341, 6 N.E.2d 47 (1936); Guastoferri v. Board of Education of the City of New York, 183 Misc. 158, 47 N.Y.S.2d 561 (Sup. Ct. 1944); rev'd on other grounds, 270 App. Div. 946, 62 N.Y.S.2d 57 (2d Dept. 1946).) And, while the courts recognize that certain positions may by their nature be exempt because the competitive examination system cannot practicably be applied to them, this basis for exemption could

not very well be asserted to exempt a percentage of a given category of positions to which, presumably, the competitive system would otherwise apply. (See Matter of Ottinger v. Civil Service Commission, 250 N.Y. 435, 443, 148 N.E. 627, 628-29 (1925) (legislation exempting Attorney General's appointments of deputies, officers, and other persons he "deems necessary" held unconstitutional).) However, while a blanket exemption of the kind recommended in the report would, even if implemented by legislation, probably violate the Constitution, it might be possible by legislation to exempt completely certain supervisory positions now covered by the competitive system. In this connection the Legislature has already provided, in Section 2573(10) of the Education Law, that administrative assistants in high schools, as well as superintendents, high school principals, and certain other positions are exempt, and the courts have held that these exemptions do not contravene Article V, Section 6 of the Constitution. (Barnett v. Fields, 196 Misc. 339, 92 N.Y.S.2d 917 (Sup. Ct. 1949), aff'd without opinion, 301 N.Y. 543, 93 N.E.2d 346 (1950) (high school principal); Maloff v. Board of Education of the City of New York, 1 Misc.2d 300, 143 N.Y.S.2d 792 (Sup. Ct. 1955), appeal dismissed, 1 N.Y.2d 668, 133 N.E.2d 706 (1956) (administrative assistant in high schools); see also Craig v. Board of Education of the City of New York, 173 Misc. 969, 19 N.Y.S.2d 293 (Sup. Ct. 1940), aff'd without opinion, 262 App. Div. 706, 27 N.Y.S.2d 993 (1st Dept. 1941).) This exemption could, perhaps, be

extended to principals and assistant principals in the elementary and junior high schools. However, such exemptions would require legislation amending Section 2573(10). (See Maloff v. Board of Education of the City of New York, 1 Misc. 2d at 301, 143 N.Y.S. 2d at 793.) Of course, any proposal calling for a blanket exemption from the competitive system for the thousands of principal and assistant principal positions would raise very serious policy questions and could be expected to meet with strenuous political opposition in various quarters.

Basic to any discussion of Article V, Section 6 of the State Constitution is a definition of the constitutional term "competive examination." Under recent judicial interpretation, that term has received a very liberal reading. The principal case in point is Koltun v. Board of Education of the City of New York, 39 Misc. 2d 985, 242 N.Y.S. 2d 246 (Sup. Ct.), aff'd without opinion, 13 N.Y. 2d 828, 192 N.E. 2d 228 (1963), in which the New York Court of Appeals upheld the constitutionality of Section 2569-a of the Education Law, which empowers the Board of Examiners to issue regular licenses to "experienced substitute teachers" on the basis of an "examination" consisting of "an appraisal of record, classroom visits, an oral interview and physical and medical examination." In the opinion of the lower court, whose decision was affirmed by the Court of Appeals, the following statement appears:

> Petitioner also complains that the statute "eliminates for a special class of persons the written test." There is no

constitutional requirement for a written test Instead it is required by the Constitution that "Appointments and promotions * * * shall be made according to merit and fitness to be ascertained, as far as practicable by examination which, as far as practicable, shall be competitive." The statute must be regarded as requiring the board of examiners to conduct a competitive examination. Otherwise the inference would be that the Legislature intended to pass an unconstitutional statute Petitioner has not alleged that the respondents are not conducting competitive examinations under the authority of section 2569-a He seems to assume that it is impossible to conduct a competitive examination based on the factors set forth in the statute, e.g., "appraisal of record, classroom visits, an oral interview and physical and medical examinations."

In Matter of Fink v. Finegan (270 N Y 356, 361-362) it is stated: "A test or examination to be competitive, must employ an objective standard or measure. Where the standard or measure is wholly subjective to the examiners it differs in effect in no respect from an uncontrolled opinion of the examiners and cannot be termed competitive."

> Nothing before this court suggests that the Legislature, in enacting section 2569-a, intended that the board of examiners was to depart from an objective standard or that a standard wholly subjective to the examiners was to be used. There is alleged no fact purporting to show that the Board of Examiners in conducting examinations held pursuant to section 2569-a is not using an objective standard. (39 Misc 2d at 987, 242 N Y S 2d at 250)

On the basis of the Koltun case, it would seem that the report's recommendations regarding issuance of licenses to persons now holding New York State certificates, as well as persons having equivalent credentials elsewhere, could be implemented without running afoul of the State Constitution. Furthermore, it would seem that those recommendations could be implemented by the Board of Examiners within its present powers under Section 2569 of the Education Law. That is not to say that the enactment of enabling legislation would not be desirable.

The Koltun case, after all, did involve such legislation, and even that legislation dealt with persons who had previously been licensed by the Board of Examiners to substitute positions on the basis of a competitive examination conducted by that Board.

The foregoing analysis, then, suggests that it would be possible, without constitutional amendment, and perhaps even without new legislation of any kind, to implement the recommendations regarding recruitment, appointment and promotion.

Finally, the recommendation that the substitute license category be abolished and those previously so licensed be brought into the regular license category, presents a number of problems. To be sure, the problems are neither constitutional nor statutory. The Court of Appeals' approval of Section 2569-a of the Education Law certainly indicates that a means now exists, and suggests that other means legally might be devised, for bringing substitute teachers quickly into the regular license category. In addition, once there are sufficient regularly licensed teachers to fill all positions in a school system, the question of substitute license category would become moot. On the other hand, the Education Law in Section 3105 recognizes the substitute category, and the City Board of Education not only has issued a large number of substitute licenses but it has also undertaken, in the Collective Agreement, to accord persons serving under such licenses very significant rights, including retention rights in specific schools. While such rights are,

of course, conditional on the unavailability of regularly licensed teachers, it could plausibly be argued that the Collective Agreement implicitly protects the substitute license category, at least so long as the number of persons voluntarily accepting regular licenses is insufficient to cover the number of positions in the school system. Whether or not this argument would be accepted by the State Commissioner or by the courts is problematical, but there is enough substance to the argument to justify extreme caution in recommending any drastic changes in the substitute system. One would first certainly want to know exactly how an individual substitute's position would be affected by any forced change to regular status— for example, would the consequences be the same if that individual, as a regular teacher, refused to accept or to continue in an assignment? Until a great many such questions can be posed, and answered, it would seem unwise to put forward the recommendations regarding the substitute license category that are set forth. On the other hand, if those recommendations envision no substantive change in the rights, privileges and duties that presently attend the substitute license, it seems pertinent to ask whether anything that might be accomplished by the recommendations might not be outweighed by the concern and controversy, however unwarranted, that the recommendations might engender.

Conclusions

The recommendations regarding the creation of a Personnel

Commission would require legislation amending Section 2569 of the Education Law. While the Personnel Commission would not be required under present law to be staffed by any or all of the personnel of the Board of Examiners, at least some such personnel would probably be entitled to priority in filling openings in the proposed Selection Bureau of the Personnel Division.

Most of the recommendations regarding recruitment, appointment and promotion could be implemented by action of the Board of Education or the Board of Examiners, though on some points enabling legislation would be desirable. However, the recommendation that the superintendent be empowered to make a certain number of "exempt" administrative and supervisory appointments each year would not be capable of implementation without an amendment of the State Constitution. Finally, the recommendation for abolition of the substitute license category may raise significant questions. Before those questions could even be posed, it would be necessary to know in detail what that recommendation would mean for persons now serving under substitute licenses.

APPENDIX

New York State Constitution, Article 5, Section 6

[Civil service appointments and promotions; veterans' preference and credits.]

Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive. .

New York State Education Law, Section 2569

Board of Examiners.—1. In a city having a population of one million or more there shall be a board of examiners to consist of nine members, one of whom shall be the superintendent of schools or an associate superintendent designated by him to act in his stead during his pleasure. No person other than the superintendent of schools or a deputy superintendent so designated shall, while in the supervising or teaching service of the city, serve on such board. It shall be the duty of the board to hold examinations whenever necessary, to examine all applicants who are required to be licensed or to have their name placed upon eligible lists for appointment in the schools in such city, except examiners, and to prepare all necessary eligible lists. Eligible lists shall not be merged and one eligible list shall be exhausted before nominations are made from a list of subsequent date. No eligible lists, except principal's eligible lists, shall remain in force for a longer period than four years. The board of examiners may employ temporary assistants at a compensation fixed by the board of education. It shall perform such other duties as the board of education may require.

2. An eligible list of candidates for appointment as member of the board of examiners shall remain in force for four years from the date of its promulgation. Prior to the expiration of said list, the board of education may request the civil service commission or body which created said list to continue said list for a period of two years, and said civil service commission shall grant such request. Said civil service commission may, upon like request made prior to the termination of said two years, continue said list for a further period of two years.

Appendix—continued

New York State Education Law, Section 2585

Continuation in office of boards, bureaus, teachers, principals and other employees, et cetera.

2. If a board of education abolishes an office or position and creates another office or position for the performance of duties similar to those performed in the office or position abolished, the person filling such office or position at the time of its abolishment shall be appointed to the office or position thus created without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he has filled.

3. Whenever a board of education abolishes a position under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued.

4. In a city having a population of one million or more, no member of the teaching or supervising staff who has been regularly appointed in accordance with merit and fitness, determined by competitive examination, shall be dismissed upon the abolition of his position if:

a. The superintendent of schools, upon the recommendation of the board of examiners, certifies to the board of education that such member is competent to serve in any vacant position in the same rank or level or in a lower rank or level of service with such board; and

b. The superintendent of schools, upon direction of the board of education, assigns such member to any such vacant position, in which event such member so assigned shall serve in such position without reduction of salary.

5. If an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been

Appendix—continued

one of faithful, competent service in the office or position he has filled. The persons on such preferred list shall be reinstated or appointed to such corresponding or similar positions in the order of their length of service in the system.

New York State Education Law, Section 2573(10)

Appointment of assistant, district or other superintendents, teachers and other employees, their salaries, et cetera.

. . .

10. In a city having a population of one million or more, recommendations for appointment to the teaching and supervising service, except for the position of superintendent of schools, associate superintendent or assistant superintendent, or director of a special branch, principal of or teacher in a training school, or principal of a high school, or administrative assistant in a high school, or assistant administrative director, shall be from the first three persons on appropriate eligible list prepared by the board of examiners. . . .